

800 Delaware Avenue, Suite 200
Daniel L. McKenry, DE Bar No. 2689
/s/Daniel L. McKenry

Heceler & Fraibizzio, P.A.

convenience of the Court.

PLEASE TAKE NOTICE that the attached Motion will be presented to the Court at the

Tucson, AZ 85704
205 W. Giaconda Way, Suite 115
First Correctional Medical
Dr. Tammy Kastre

PRO SE
Smyrna, DE 19977
1181 Paddeock Road
Delaware Correctional Center
#144108
Thomas R. Miller

Willmington, DE 19801
711 King Street
Bailek & Bailek, LLC
James Edward Dimic, Esquire

NOTICE OF MOTION
Dr. MAGGIE BAILEY, CMS, and
FIRST CORRECTIONAL
MEDICAL INC.
Defendants.

JURY OF 12 DEMANDED
V.
Plaintiff,
C.A. No.: 06-349-GMS
Thomas R. Miller

FOR THE DISTRICT OF DELAWARE
IN THE UNITED STATES DISTRICT COURT

379123/17887

Attorney for Defendant
Wilmington, DE 19899
PO BOX 128

379123/17887

Companies.

LLC, and its employees were insured for professional liability by Chubb Group of Insurance

2. From July 1, 2002 through June 30, 2005, First Correctional Medical - Delaware,

30, 2005.

to provide health care to the Delaware Department of Correction from July 1, 2002 through June

1. First Correctional Medical - Delaware, LLC contracted with the State of Delaware

capitoned matter, for the following reasons:

request leave to withdraw as defense counsel for First Correctional Medical Inc., in the above

Rule 83.7 of the Local Rules for the District of Delaware, the undersigned attorneys hereby

Pursuant to the Delaware Lawyers' Rules of Professional Conduct 1.16 (b)(5),(6), and

MOTION TO WITHDRAW

(Defendants.)
(MEDICAL INC.)
(FIRST CORRECTIONAL)
(Dr. MAGGIE BAILEY, CMS, and)
(JURY OF 12 DEMANDED)
(V.)
(Plaintiff,
C.A. No.: 06-349-GMS)
(Thomas R. Miller)

FOR THE DISTRICT OF DELAWARE
IN THE UNITED STATES DISTRICT COURT

² Mr. Monzo and Ms. Spring are longer affiliated with McCullough and McKinley P.A. nor with Heckler & Fraibizzi.
¹ McCullough & McKinley has dissolved. Mr. McKinley has moved to Heckler & Fraibizzi P.A. and Substitutions of Counsel have been filed.

imdemnity costs of lawsuits pending in the State and/or District of Delaware. At that time, First financial difficulties and could not meet its financial obligations with respect to defense and Delaware, LLC, was made aware that First Correctional Medical, Inc., was experiencing severe

7. In October 2006, the undersigned defense counsel for First Correctional Medical -

Medical and its various employees after July 1, 2005.

Correctional Medical - Delaware, LLC, funded the defense of lawsuits against First Correctional Medical, and its employees.

6. First Correctional Medical Inc., the Arizona-based parent company of First

McKinley, and Ms. Monzo remained counsel for First Correctional Medical - Delaware, LLC, Delaware, LLC, elected to proceed as a self-insured entity. McCullough & McKinley, Mr. McKinley, and Ms. Monzo, has no assets

5. For all claims arising on or after July 1, 2005, First Correctional Medical -

LLC, has no assets understanding of the undersigned defense counsel that First Correctional Medical - Delaware. Although no formal dissolution papers were filed with the State of Delaware, it is the Correction, First Correctional Medical - Delaware, LLC ceased operations in the State of

4. After the termination of its health care contract with the Delaware Department of defense coverage for First Correctional Medical - Delaware, LLC, and its various employees.

(formerly Diana M. Spring, Esquire), to provide medical malpractice and 42 U.S.C. § 1983 Daniel L. McKinley, Esquire, Steven F. Monzo, Esquire, and Diana Spring Monzo,² Esquire

3. Chubb Group of Insurance Companies retained McCullough & McKinley, P.A.,

379123/17887

over (25) twenty-five lawsuits despite being unable to contact First Correctional Medical Inc., Frabizzio, continues to defend First Correctional Medical - Delaware, LLC, and its employees in Medical has not discussed its intentions with Heckler & Frabizzio. To date, Heckler & McCleary P.A. dissolved and Mr. McCleary moved to Heckler & Frabizzio. First Correctional services rendered and promising to establish a monthly retainer fund. In July 2007, McCullough payments to McCullough & McCleary, P.A., despite promising a \$30,000 check for past legal 10. Since January 1, 2007, First Correctional Medical, Inc., has not made any monies owed.

McCullough & McCleary, P.A., current on its legal bills and actually came within \$30,000 of the 9. Until December 31, 2006, First Correctional Medical, Inc., did its best to bring counsel for First Correctional Medical - Delaware, LLC, and its employees.

adhere to these requests would result in the withdrawal of McCullough & McCleary, P.A., as of any changes to the viability of First Correctional Medical, Inc., and finally that failure to defense of First Correctional Medical lawsuits, McCullough & McCleary would be kept abreast fees would be brought current, a monthly budget would be put in place regarding the continued Delaware, LLC, and its employees, with the understanding that McCullough & McCleary's legal McCullough & McCleary, P.A., agreed to continue to represent First Correctional Medical - Jonathan Rothschild, Esquire (Arizona Financial Counsel for First Correctional Medical, Inc.), Todd Jackson, Esquire (Arizona Corporate Counsel for First Correctional Medical, Inc.), and of First Correctional Medical, Inc.), Michael Johnson (CFO of First Correctional Medical, Inc.), and 8. After lengthy conversations and correspondence with Tammy Kastre, M.D. (CEO McCullough & McCleary, P.A.

379123/17887
Correctional Medical, Inc., was several months behind on its payments of legal fees to

- reasonable extension of time to obtain new Counsel and respond to discovery.
14. Further, the undersigned requests this Court grant First Correctional Medical a position adverse to First Correctional Medical, Inc., as a conflict of interest now exists between the parties.
- cannot continue the representation of the individual named employees of First Correctional former employees in lawsuits in the State of Delaware, the former employees may be in a position to First Correctional Medical, Inc. The undersigned counsel submit that they cannot be reached for guidance regarding legal strategies and general defense of its cases.
13. Because First Correctional Medical, Inc., is no longer funding the defense of its clients' legal defense in the State/District of Delaware. Furthermore, First Correctional Medical Heckler & Fraibizzi cannot sustain the financial burden of funding First Correctional Medical financial obligations to McCullough & McKeen, P.A., and to Heckler & Fraibizzi, P.A., and Correctional Medical because First Correctional Medical, Inc., has substantially failed to meet its defense in mediation and Court Ordered response to Discovery. Those officials have not participated in trial. First Correctional Medical Inc.'s officials have responded to Court Ordered various litigation strategies and the funding of expert fees in defensible cases quickly also made numerous attempts to contact officials from First Correctional Medical, Inc., regarding First Correctional Medical, Inc., regarding its outstanding fees, but the undersigned counsel has not only attempted to contact officials from McKenry and \$17,672.00 owed to Heckler & Fraibizzi.
11. The undersigned defense counsel has not only attempted to contact officials from officials and being in arrears of legal fees in excess of \$50,253.55 owed to McCullough &

379123/17887

Wilmington, DE 19899
PO BOX 128
800 Delaware Avenue, Suite 200
Daniel L. McKenry, DE Bar No. 2689
/s/Daniel L. McKenry

HECKLER & FRABIZIO

of time to obtain new counsel and respond to discovery.

counsel to withdraw from this matter and grant First Correctional Medical a reasonable extension

WHEREFORE, undersigned counsel requests this Court grant an Order allowing

matter.

permitted to withdraw as counsel for First Correctional Medical Inc., in the above captioned

15. For the abovementioned reasons, the undersigned hereby request that they be

379123/17887

J.

to Withdraw is granted.

is HEREBY ORDERED that Heckler & Rabizzio, P.A., Daniel L. McKenry, Esquire's Motion to Withdraw and any opposition thereto, it
Heckler & Rabizzio, P.A., Daniel L. McKenry, Esquire's Motion to Withdraw and any opposition thereto, it
And now this _____, 2008, having considered Heckler &

ORDER

Thomas R. Miller
Plaintiff,
C.A. No.: 06-349-GMS
JURY OF 12 DEMANDED
Dr. MAGGIE BAILY, CMS, and
FIRST CORRECTIONAL
MEDICAL INC.
Defendants.

v.

FOR THE DISTRICT OF DELAWARE
IN THE UNITED STATES DISTRICT COURT

379123/17887

Tucson, AZ 85704

205 W. Giaconda Way, Suite 115

First Correctional Medical

Dr. Tammy Kastre

VIA U.S. MAIL

PRO SE

Smyrna, DE 19977

1181 Padlock Road

Delaware Correctional Center

#144108

Thomas R. Miller

VIA U.S. MAIL

Wilmington, DE 19801

711 King Street

Bahic & Bailek, LLC

James Edward Dimec, Esquire

upon the following individuals via first class mail:

I certify that, on 29th day of January 2008 a copy of this Motion to Withdraw was served

CERTIFICATE OF SERVICE

v.

Defendants.)

MEDICAL INC.)

FIRST CORRECTIONAL)

Dr. MAGGIE BAILEY, CMS, and)

JURY OF 12 DEMANDED)

)

)

)

)

)

)

)

)

)

)

)

Plaintiff,)

C.A. No.: 06-349-GMS)

)

)

)

)

)

)

Thomas R. Miller

FOR THE DISTRICT OF DELAWARE
IN THE UNITED STATES DISTRICT COURT

379123/17887

/s/Daniel L. McKenry
Daniel L. McKenry, DE Bar No. 2689
800 Delaware Avenue, Suite 200
PO BOX 128
Wilmington, DE 19899

HECKLER & FRABIZZIO

379123/17887